

REMARKS

In the action of March 9, 2004, the examiner rejected claims 1-5, 7, 9 and 12-14 under 35 USC §103 as unpatentable over Giuliani in view of Roberts, Roberts being a newly cited reference.

Applicants have carefully reviewed Roberts and have further amended claim 1. Roberts is directed toward a toothbrush having a combined toothbrush and gum massage structure and capability. Referring to Figure 1, the brush portion 16 includes a number of non-elastomeric bristles 18 which are used for conventional teeth cleaning operation, and elastomeric bristles 20 which are disposed around the outer perimeter of the head. An alternative arrangement is shown in Figure 3.

In applicants' invention, the stimulator member comprises substantially only cylindrical finger elements, substantially all of which are elastomeric members having specific diameter and durometer characteristics. Applicants' invention does not have non-elastomeric filaments (bristles) configured for teeth cleaning. The non-elastomeric filaments of Roberts have a substantially smaller diameter (3-10 mils) than applicants' claimed range for its elastomeric finger elements. Combining the arrangement of Roberts with Giuliani would result in an inoperative xerostomia treatment device. It would not produce the recited vibrational function on the salivary member.

With respect to the examiner's statements relative to "intended use" of the device, please note that the actual language of the claim characterizes the elements structurally in terms of performing a particular function, i.e. the stimulator member has such a frequency and amplitude, and the finger elements have such physical characteristics, including a particular durometer (the finger elements are flexible, resilient and soft), that a vibrational effect is produced on the salivary member sufficient to significantly increase saliva production. This is not a mere statement of use; it characterizes structural elements to produce a specific function. Hence, all of the language of the claim must be given weight in the determination of patentability.

Roberts, with its combination of elastomeric and non-elastomeric bristles, apart from its not meeting the limitation that substantially all of the finger elements have the specified characteristics of height, diameter and durometer, could not meet the specified function limitations of stimulating the salivary member either.

In view of the above, claim 1 is allowable over the references. Further, since claims 2-5, 7 and 9 are dependent upon claim 1, those claims are also allowable.

This is also to request a one-month extension of time. Enclosed is the required fee of \$110. The Commissioner is authorized to charge any fees or deficiencies or credits to Deposit Account 07-1900.

Respectfully submitted,
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